

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, } No. CR-06-0542 MHP
Plaintiff, }
v. }
DAVID MARION SIMCHO, }
Defendant. }

THIS MATTER came before the Court on Defendant's Motion for Bail Pending Appeal. By Clerk's Notice entered July 8, 2009, the parties were notified that the Motion would be submitted on the papers without oral argument. The Court having considered the Motion, the United States' Opposition thereto, and for good cause shown,

THE COURT HEREBY FINDS that the Defendant has failed to show that any legal question relevant to his appeal is either debatable or doubtful.

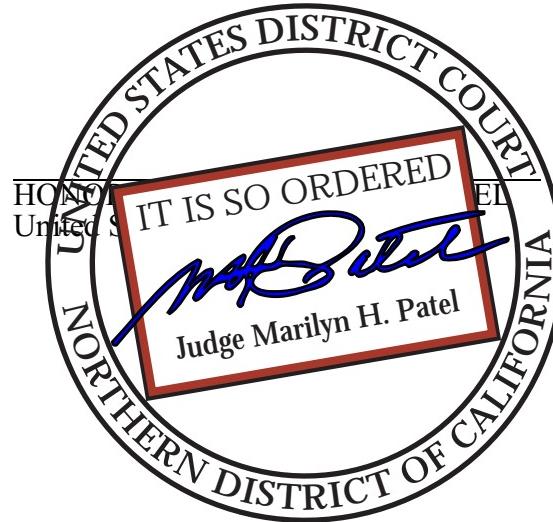
THE COURT FINDS that Defendant acknowledges that the appeal will most likely be dismissed and his claim for ineffective assistance of counsel will likely be raised as a habeas corpus proceeding pursuant to 28 U.S.C. §2255. Defendant has not filed a habeas corpus petition. In the event that said habeas motion is filed, such proceedings would be separate from the appeal and therefore would not be grounds under 18 U.S.C. §3143(b) to justify his release pending appeal.

1 THE COURT FURTHER FINDS that the statutory maximum sentence available for the
 2 crimes of preparing a false return is 3 years and 5 years for tax evasion. See 26 U.S.C. §§
 3 7206(2) and 7201. Defendant stipulated in his Plea Agreement to a total offense level
 4 of 17 a criminal history category II, yielding a sentencing range of 27 to 33 months imprisonment
 5 under the U.S.S.G. . The presentence report assessed a total offense level of 17 and a criminal
 6 history category II, yielding a sentencing range of 27 to 33 months imprisonment under the
 7 U.S.S.G. At Defendant's sentencing hearing, the Court considered the guidelines sentencing
 8 range together with other factors set forth in §3553(a) of Title 18 of the United States Code.
 9 United States v. Booker, 543 U.S. 220 (2005). The Court chose a term of imprisonment at the
 10 low end of the guidelines range and within the sentencing range identified in the plea agreement.

11 Accordingly,

12 IT IS HEREBY ORDERED that the Plaintiff's Motion for Bail Pending Appeal is
 13 **DENIED.**

14
 15 Date: 7/13/2009



21
 22
 23
 24
 25
 26
 27
 28 [PROPOSED] ORDER
 DENYING MOTION FOR
 BAIL PENDING APPEAL,
US v. Simcho, Case No.
 CR-06-0542 MHP